

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

July 1, 2015

Andy Slavitt  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Mr. Slavitt:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing its oversight of the Medicaid program to ensure that it operates effectively and tax dollars are spent appropriately. Specifically, the committee is looking into why the Centers for Medicare and Medicaid Services (CMS) eased its improper payment rate target for 2015.

On June 2, 2015, the Subcommittee on Oversight and Investigations held a hearing entitled, "Medicaid Program Integrity: Screening Out Errors, Fraud, and Abuse." The hearing highlighted a recent U.S. Government Accountability Office (GAO) report that examined the extent to which federal and state oversight policies, controls, and processes are in place to prevent and detect fraud and abuse in the Medicaid program.<sup>1</sup> It was noted that Medicaid remains on GAO's "high-risk" list for fraud, waste, and abuse due to concerns about the adequacy of the fiscal oversight of the program, including improper payments.<sup>2</sup> GAO has designated Medicaid a high-risk program since 2003.

For fiscal year 2014, CMS reported an estimated improper payment rate for the Medicaid program of 6.7 percent, or \$17.5 billion. This was an increase over its 2013 estimate of 5.8 percent, or \$14.4 billion. Rather than looking to improve its improper payment rate, CMS raised its target rate for the Medicaid program from 5.6 percent to 6.7 percent for 2015.

---

<sup>1</sup> U.S. GOV'T ACCOUNTABILITY OFF., MEDICAID: ADDITIONAL ACTIONS NEEDED TO HELP IMPROVE PROVIDER AND BENEFICIARY FRAUD CONTROLS, GAO-15-313 (May 2015) *available at* <http://gao.gov/products/GAO-15-313>.

<sup>2</sup> U.S. GOV'T ACCOUNTABILITY OFF., HIGH-RISK SERIES: AN UPDATE, GAO -15-290 (Feb. 2015) *available at* <http://gao.gov/products/GAO-15-290>.

At the hearing, members of the subcommittee questioned the decision to raise the target rate. Rep. Chris Collins (NY) stated, “It is setting the bar so low . . . we had a goal of 5.6, we hit 6.7, so next year let us make it 6.7. Well, if it is 7.2, then the next year it is going to be 7.2.”<sup>3</sup>

Members tried to determine who was responsible for raising the target rate. Chairman Murphy and the CMS witness, Dr. Agrawal, engaged in the following exchange:

Chairman Murphy: Just to clarify, Dr. Agrawal, did you set the standard at 6.7 percent?

Dr. Agrawal: No. That is a process that involves a different part of the, you know, it is obviously kept separate from folks that are trying to make the interventions, right, so that there is some objectivity to it.<sup>4</sup>

When Vice Chairman Marsha Blackburn asked who sets the target, Dr. Agrawal responded, “I don’t know.”<sup>5</sup>

Even a small percentage of improper payments represent billions of taxpayer dollars. As Medicaid enrollment increases—especially under the Patient Protection and Affordable Care Act—CMS must constantly strive to root out fraud and abuse in the program. The committee is concerned about CMS accepting the upward trend in improper payments by revising its targets upward to match, rather than maintaining a goal to reduce this type of program waste.

To assist the committee’s inquiry, please provide the following documents and information by July 15, 2015:

1. All documents relating to the decision to raise the Medicaid program’s improper payment rate target from 5.6 percent for 2014 to 6.7 percent in 2015.
2. A complete description, including all supporting documents, of the process to determine the improper payment rate target for the Medicaid program.

Please also provide answers to the following questions:

1. What is CMS’ rationale for raising the Medicaid improper payment rate target from 5.6 percent for 2014 to 6.7 percent in 2015?
2. How does CMS implement relevant provisions of Office of Management and Budget’s Circular A-123, Appendix C when calculating its improper payment rate target?

---

<sup>3</sup> *Medicaid Program Integrity: Screening Out Errors, Fraud, and Abuse: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Com.*, 114th Cong. (June 2, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*




3. Does raising Medicaid's improper payment rate target comply with internal control practices? Does it conflict with any internal control practices?
4. What is the chain of command for reviewing and approving Medicaid's new target rate within CMS and, as applicable, within the Department of Health and Human Services?
5. Is there any coordination and/or consultation with the OMB when deliberating the improper payment target rate? If so, what is the nature of this coordination and/or consultation?
6. Who ultimately approves Medicaid's improper payment rate target?
7. How does CMS calculate the Medicaid improper payment rate? What, if any, changes have been made to the methodology for determining the improper payment rate?
8. How does the improper payment rate affect or inform the improper payment rate target?
9. What happens if CMS does not meet its improper payment rate target for the Medicaid program? What, if any, repercussions result?

In addition, the committee requests that CMS make arrangements as soon as possible to brief committee staff on this matter.

An attachment to this letter provides additional information about how to respond to the committee's request. If you have any questions regarding this request, please contact Jessica Donlon with the majority committee staff at (202) 225-2927.

Sincerely,

  
Fred Upton  
Chairman  
Tim Murphy  
Chairman  
Subcommittee on Oversight and  
Investigations

Attachment

cc: The Honorable Frank Pallone, Jr., Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations